

# Nielsen BookData Enhanced Service Standard Terms & Conditions

By signing the *Nielsen Enhanced Service Publisher Agreement*, you (the "Publisher") agree to accept and abide by the following terms and conditions.

## Definitions

"Nielsen" means Nielsen Book Services Limited, trading as Nielsen BookData, as described in the *Nielsen Enhanced Service Publisher Agreement*;

"We", "us" and "our" refer to Nielsen;

"Publisher" means the Publisher participating in the Enhanced Service provided by Nielsen, as described in the *Nielsen Enhanced Service Publisher Agreement*;

"You" and "your" refer to the Publisher;

"Acceptable Form" means any acceptable means by which you can provide details of your titles to us, as listed in the "Supplying data and images" section on the Publishers & Distributors page of the Nielsen BookData website;

"Agreement" means the Nielsen Enhanced Service Publisher Agreement and these *Nielsen Enhanced Service Standard Terms & Conditions*, together;

"Basic Bibliographic Data" means ISBN, title, contributor, publisher, etc;

"Contract Year" means a twelve (12) month period running from the Start Date or the anniversary of that date;

"Enhanced Data" means any extended and descriptive data, namely: short and long descriptions, contents lists, author biographies, reviews, and promotional information, related to your titles;

"Initial Term" means the initial period of the duration of the Agreement as stated in the *Nielsen Enhanced Service Publisher Agreement*;

"Nielsen BookData website" can be found at [www.nielsenbook.co.uk](http://www.nielsenbook.co.uk);

"Nielsen Data" means our bibliographic database and attendant products and services, and includes Enhanced Data, Basic Bibliographic Data and commercial information about your titles;

"Party" and "Parties" means either or both of us (Nielsen) and you (the Publisher);

"Payments" means those payments to be made by you to NBSL under this Agreement;

"Record" means textual and/or numeric data describing a single book or other publication or product;

"Start Date" means the start of the Initial Term, as stated in the *Nielsen Enhanced Service Publisher Agreement*;

"Your Information" means all information you supply for your publications, including Basic Bibliographic Data and Enhanced Data as applicable.

## Information supply

1. You undertake to supply Your Information to us, in an Acceptable Form, about any of your publications ("Eligible Publication") which satisfies the criteria for inclusion in our book information services. Your Information shall, for the purposes of these terms and conditions, be deemed to include any information about any of your publications that you may have supplied to us in the past.
2. You may also supply to us, in an Acceptable Form, a front cover or jacket, or image thereof, ("Cover") of any Eligible Publication for which you have supplied information to us in accordance with paragraph 1. Covers shall, for the purposes of these terms and conditions, be deemed to include any Cover of any of your publications that you may have supplied to us in the past.
3. Details of our criteria for inclusion (the type of material we will list on our database and in our products) can be found in the "Supplying data and images" section of the Publishers & Distributors page of the Nielsen BookData website.

## Services

4. In consideration for you making annual Payments to us, as specified on the *Nielsen Enhanced Service Publisher Agreement*, in accordance with our pricing policy for the Enhanced Service, we undertake, for the duration of the Agreement:
  - a) To enter into our bibliographic database full bibliographic Records ("Your Records") for your Eligible Publications based on Your Information;
  - b) For all of Your Records, to include all of the Enhanced Data as provided, and we will not edit or amend content in Your Information except under the provisions of paragraph 20 below or where content is of excessive length;

- c) To include in all of our products and services (subject to eligibility and selection criteria) all of Your Records including all of the Enhanced Data as is appropriate or selected for such products and services;
- d) To update Your Records on our bibliographic database and in our relevant products and services if you notify us in an Acceptable Form of a material change to Your Information;
- e) To enter into our image database and include in our relevant products and services an electronic image of any Cover which you have supplied to us in an Acceptable Form;
- f) To exclude from any subsequent issues of our products and services any of Your Records, or any of your Covers, in the event that you inform us in writing that, for legal or other reasons, you wish such Record(s) or Cover(s) to be withdrawn;
- g) To provide you with access to a webpage allowing you to view Your Records and enter requests for changes and additions to Your Records;
- h) If so requested in writing, to provide you with access to Nielsen online services and/or CD-ROM services at a preferential rate for Enhanced Service publishers; and
- i) If so requested, to provide you from time to time with a list of key clients in the UK and worldwide to whom Your Records are distributed, pursuant to such clients' consent.

## License

- 5. By providing Your Information to us you grant us a perpetual, irrevocable licence to retain Your Information indefinitely, and, subject to sub-paragraph 4(g), to use Your Information worldwide, without restriction and at our sole discretion, for the purpose of providing information about books and other publications and for any other purpose reasonably connected with the sale and supply of books; in such form and format as we may elect in the ordinary course of our business;
- 6. By providing Covers to us, you license us to retain electronic images of said Covers indefinitely, and, subject to sub-paragraph 4(g), to use such images worldwide, without restriction and at our sole discretion, for the purpose of providing information about books and other publications and for any other purpose reasonably connected with the sale and supply of books; provided that:
  - a) We recognise that copyright in your Covers remains at all times with yourselves and/or your licensors,
  - b) We will not alter, modify or distort an image of a Cover in any way other than by enlarging or reducing a complete image, or converting a complete image from one digital storage format to another, and
  - c) We will use only an image of the complete Cover as supplied to us.

## Warranty and indemnity

- 7. By supplying us with Your Information and/or Covers you warrant that (a) you are entitled to and have, and will continue to be entitled to and have, all necessary rights (including patent, trademarks and copyrights) to supply us with Your Information and/or such Covers, (b) your performance under the Agreement does not and will not materially conflict with, violate or result in a breach of any provision of any government or court order, judgment or decree, or with any other contract or agreement to which you may be bound, and (c) the performance of your obligations under the Agreement, including the collection, compilation and transfer of Your Information and Covers to us and the subsequent use of Your Information and Covers by us and our clients as authorised by this Agreement, will not violate and will at all times be in compliance with all applicable laws, rules and regulations, applicable industry best practices, and rights of third parties and privacy policies.
- 8. You undertake to fully indemnify us and hold us harmless from and against any and all loss, damage, liability and costs, including reasonable legal fees, arising from any claim brought against us on the basis that any material supplied by you to us, (including, without limitation, Your Information or Covers), is defamatory or misappropriates or infringes the copyright or other intellectual property rights of a third party or that you have breached any warranty specified in paragraph 7 above.

## Limitation of liability

- 9. With the exception of any claim for which either Party has expressly agreed to indemnify the other or in the case of a Party's gross negligence or wilful misconduct or in the case of personal injury (including death) or damage to tangible personal property caused directly by the negligent acts or omission of either Party in connection with this Agreement, ("Excluded Claims"), the maximum aggregate liability of either Party arising out or relating to this Agreement, whether in contract, tort (including negligence), or any other form or cause of action, shall be limited to the total fees paid by you during the Enhanced Service Year immediately prior to the date the cause of action has accrued. Unless otherwise prohibited by applicable law, the maximum aggregate liability of either Party for Excluded Claims arising out or relating to this Agreement shall be limited to \$1,000,000. Neither Party will be liable to the other for incidental, indirect, consequential, special, or punitive damages or for any claim in excess of amounts actually paid to us by you during the preceding twelve (12) months under the Agreement. Nielsen will not be liable, in contract, tort (including negligence) or otherwise, for any loss, expense or damage of any kind including, without limitation, special, incidental or consequential damages, due to any failure to provide the Nielsen Data or resulting from any errors or inaccuracies in the Nielsen Data or its use by Publisher or others. UNLESS OTHERWISE PROHIBITED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT AFTER THE SHORTER OF 1 YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED OR MORE THAN 2 YEARS AFTER THE TERMINATION OF THIS AGREEMENT. THESE REMEDIES ARE EXCLUSIVE.
- 10. We use all reasonable efforts to keep the Nielsen Data up-to-date, but we do not warrant that the Nielsen Data is error-free, accurate, complete or up-to-date, and do not accept responsibility or liability for the consequences of any such error, inaccuracy or incompleteness or for any of the Nielsen Data being out-of-date. Nielsen DISCLAIMS, AND PUBLISHER HEREBY WAIVES, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, TO PUBLISHER OR TO ANY THIRD PARTY, CONCERNING THE NIELSEN DATA PROVIDED HEREUNDER INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The foregoing disclaimer shall not act as or constitute an admission by Nielsen that the Nielsen Data constitutes goods, commodities or tangible personal property under applicable law.

## Payments

11. For the Initial Term of this Agreement, you will make Payments to Nielsen in the amounts and on the terms set out in the Nielsen Enhanced Service Publisher Agreement. For each year after the Initial Term, invoices for Payments will be calculated and sent to you thirty (30) days in advance of the start of that Contract Year.
12. We undertake not to increase per record rates for the Nielsen Enhanced Service by more than 5% from one Contract Year to the next.
13. If you are late with Payments, NBSL reserve the right to charge interest on the amount outstanding at the rate of 4% above the Base Rate of HSBC Bank in force at the time for the period from the due date until the date the Payment is received.

## Term and termination

14. The Agreement will run for the Initial Term, and will then automatically renew for successive Contract Years, unless or until terminated in accordance with the provisions below. On termination, we will retain all Enhanced Data but it will no longer be included and displayed in our products and services; your titles will be eligible for our Basic Listing service only (as described on the Nielsen BookData website).
15. The Agreement may be terminated only as follows:
  - a) Either Party may terminate to take effect at the end of the Initial Term or on the last day of any subsequent Contract Year, having first given two (2) calendar months' notice in writing (email suffices); that is, on or before the Notice Date stated on the *Nielsen Enhanced Service Publisher Agreement*;
  - b) Either Party may terminate immediately by written notice if the other Party commits any material breach of these terms or conditions and fails to remedy such breach within thirty (30) days after receiving written notice of such breach;
  - c) Either Party may terminate if the other Party becomes bankrupt, or insolvent, or passes a resolution for winding-up, or has a provisional liquidator or administrator or an administrative receiver appointed over the whole or any part of its undertaking, property or assets;
  - d) Nielsen may terminate if it is terminating the Enhanced Service to all publishers.
16. Early termination of your Enhanced Service under the terms of sub-paragraph 15 (b) or (c) shall be without prejudice to any other rights or remedies that either you or we may be entitled to hereunder or at law and shall not affect any of your or our accrued rights or liabilities.

## General

17. You acknowledge that all intellectual property rights in Nielsen Data are owned by us or (where relevant) our third-party suppliers.
18. We reserve the right to make changes to these terms and conditions at any time. We will inform you of any such change by posting notice of it on the Terms & Conditions page of the Nielsen BookData website. In the event that such change is unacceptable to you, you may, within thirty (30) days of the date of such notice, terminate the Agreement by giving notice to us in writing (email suffices). We will refund any unused portion of your payment.
19. We reserve the right to remove any of Your Records, and/or any part of Your Information (including if necessary Enhanced Data), and/or Covers from our database(s) and/or our products if we consider, in our reasonable opinion, that it/they may be unlawful, fraudulent, libellous, defamatory, obscene or likely to cause offence.
20. These terms and conditions, together with the *Nielsen Enhanced Service Publisher Agreement*, constitute the entire agreement and understanding between you and us in relation to their subject matter and supersede all previous terms and conditions, agreements, understandings and undertakings in such respect.
21. Unless otherwise specifically stated, these terms and conditions do not create any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to them and no person who is not a party to these terms and conditions may enforce any of their terms or rely on any exclusion or limitation contained in them.
22. If any term of these terms and conditions shall be held to be invalid, illegal or unenforceable, the remaining terms and conditions shall remain in full force and effect and such invalid, illegal or unenforceable terms and provisions shall be deemed, ab initio, not to have been part of these terms and conditions.
23. The interpretation, construction and effect of these terms and conditions shall be governed by and construed in all respects in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English Courts